

The University of Tulsa and Security Officer's Cooperative, Petitioner. Case 17-RC-10524

August 27, 1991

**DECISION ON REVIEW AND ORDER
REMANDING**

BY CHAIRMAN STEPHENS AND MEMBERS
CRACRAFT AND OVIATT

On July 16, 1990, the Regional Director for Region 17 issued a Decision and Direction of Election in which he determined that the appropriate unit consists of the Employer's full-time and regular part-time security officers, excluding, inter alia, those part-time security officers who are also employed as municipal police officers. The Employer filed a timely request for review of the Regional Director's determination and, on August 14, 1990, the Board, by unpublished order, granted that request.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

For the following reasons, we have determined that the excluded part-time officers share a community of interest with the other unit members, and that there are no adequate grounds for departing from precedent that calls for placing all of an employer's guards in a single guard unit. We accordingly find that the unit in which the election was directed is not an appropriate unit, and we reverse the Regional Director's unit determination with respect to exclusion of these employees.

I. FACTUAL FINDINGS

As the Regional Director found, the Employer is a private, nonprofit institution of higher learning located in Tulsa, Oklahoma. It provides year-round, around-the-clock campus security through its Department of Safety and Security and employs 13 individuals as regular full-time security officers and 19 individuals as regular part-time security officers. All the part-time security officers are municipal police officers for the city of Tulsa, Oklahoma.¹

The security officers are responsible for the safety of all faculty, staff, and students and the safekeeping of all physical property of the Employer. To this end, full-time and part-time security officers² patrol various segments of the 400-acre campus, doing so individually rather than in teams. Although all security officers perform foot patrols, full-time officers typically use motorized golf carts that allow them to proceed through the heart of the campus and part-time officers use university automobiles. The latter drive cars because they patrol peripheral areas of the campus and

property that the Employer owns up to 5 miles away.³ At least one area of the campus, the North Campus, is regularly patrolled by both groups.

Full-time and part-time officers use a two-way radio communications system to communicate with one another and with Director of Safety and Security Arthur Troll or the assistant director during the 7 a.m. to 3 p.m. day shift, or with the shift supervisors during the 3 p.m. to 11 p.m. and 11 p.m. to 7 a.m. shifts. An officer is expected to respond to a call in his particular zone and to assist officers in other zones. Both groups respond to calls that have a potential for confrontation. When a backup is needed to handle a particular situation, a part-time officer, who as a Tulsa police officer carries a nightstick and firearm and can make an arrest, generally is called.⁴ Full-time security officers, although not policemen, may make citizens' arrests. They do not carry firearms, although an unspecified number of department personnel possess the proper state license to do so.

With the two exceptions indicated below, full-time and part-time officers perform the same duties. All officers are required to complete incident reports; however, only full-time security officers lock and unlock campus buildings and fill out daily logs.⁵ Full-time officers wear badges and uniforms issued and maintained by the Employer, while part-time officers wear their Tulsa police officers' badges and uniforms. Both are hourly paid. The pay scale for full-time officers ranges from \$5.65 to \$9 an hour; they also are entitled to life and health insurance, and long-term disability, retirement, and pension benefits. Part-time officers receive a flat rate of \$12 an hour and do not receive these benefits. Part-time officers receive certain benefits that all regular employees of the Employer receive, such as vacation pay. Full-time officers work 8-hour shifts, and part-time officers work 5-hour shifts.

II. ANALYSIS

The Regional Director excluded the part-time officers from the unit on the basis of what he deemed to be "significant differences in the authority and responsibilities of the two groups, together with the substantial differences in their rates of compensation and fringe benefits." In analyzing community-of-interest factors, he reasoned that part-time officers serve in a dual capacity while working for the Employer. He observed that in the event of a strike, the part-time officers could "find themselves in the conflicting position

³The director of personnel and business services, William Goodwin, testified that the Employer is trying "to project an image that there's plenty of assistance around and . . . some of it may be armed."

⁴Full-time security officers have been advised not to endanger their lives if confronted with a violent situation.

⁵Troll testified that the "main reason why the full-time people [keep daily logs is] since they handle the opening and closing, it gives us a log on what time buildings were opened and when they were closed."

¹None of the full-time security officers is a municipal police officer.

²Unless otherwise indicated, "part-time officers" is used hereafter as short hand for "part-time security officers/policemen."

of policing the strike conduct of fellow unit members.”

At the outset, we note that it is undisputed that all the Employer’s security officers are properly classified as guards.⁶ As such, they belong in a single unit unless it can be said that there is a subgroup with a separate community of interest that warrants separate representation. *Broadway*, 215 NLRB 46 (1974) (finding that fitting room checkers are guards and must be included in unit with store security inspectors and watchmen).

Contrary to the Regional Director, we find that the part-time officers share a community of interest with full-time security officers sufficient to require their inclusion in the unit. The record establishes that full-time security officers and part-time officers have similar responsibilities and duties, that their functions are integrated, and that they interact with each other to the extent that can be expected of one-person patrols of 400 acres. Thus, both groups are charged with the safety and security of persons on campus and Employer-owned property. Although the two groups wear different uniforms, and only the part-time officers are armed, officers in both groups respond basically to the same types of calls, maintain contact with each other through a campus two-way radio system, and back up one another in the course of their campus protection duties. Officers in each group are expected to complete “incident reports” when appropriate. The fact, noted by the Regional Director, that only the full-time officers have keys to lock and unlock buildings and are charged with the duty of maintaining daily logs, bears a logical relationship to their full-time status. It does not diminish the strong community of interest established by other factors.

Both groups are commonly supervised by department managers and shift supervisors. Both are paid on an hourly basis, and the higher pay scale for the part-time officers is largely offset by the fact that full-time security officers receive greater fringe benefits.

The principal basis relied on by the Regional Director in approving a unit made up solely of the full-time officers is the fact that the part-time officers, as moonlighting municipal police officers, serve in a “dual capacity” insofar as they are always on duty to protect the property and lives of local citizens and would have a potential conflict of interest with other unit members if they were called on to enforce local criminal laws in the event of a strike by that unit. For the following reasons, we find this an insufficient basis for fragmenting a guard unit.

In the first place, the part-time officers’ obligation to enforce local laws for the protection of citizens substantially parallels the duties which they are called on

by the Employer to perform in the course of patrolling the campus.

With respect to the conflict-of-interest claim, the Petitioner’s contention and the Regional Director’s conclusion prove too much. The duty to enforce laws and ordinances, owed by police officers to their public employer, is a duty that would be possessed by any moonlighting police officer doing any kind of part-time work in the private sector. If this factor called for representation in separate units here, it presumably would result in placing moonlighting police officers in separate units regardless of whether their jobs for the private employer were identical in every respect to those of other nonpolice employees of the employer.⁷ If there is a potential conflict between the duty to uphold state and local laws and a policeman’s interest as a unit member during a strike, it is no greater than the conflict which might exist between a police officer’s interest in pleasing the private employer who pays the officer and the officer’s duty to enforce laws against that employer if any violations are observable on the premises. The best judge of whether such conflicts are significant is the public employer, which, if it perceives any danger, is free to prohibit or limit such outside employment, or to avoid assigning police officers who work for a struck employer to police any strike.

For all of the foregoing reasons, we find that the appropriate unit should include the part-time officers, as follows:

All full-time and regular part-time security officers, including guards who are also employed as municipal police officers, employed by the University of Tulsa at its Tulsa, Oklahoma facilities, but excluding all office clerical employees, professional employees, and supervisors as defined in the Act.

Inasmuch as the Petitioner indicated at the hearing in these proceedings that it desired to represent all security officers, but also indicated that it did not want to represent the part-time officers because it believed their other employment as municipal police officers would put it in contravention of the Act,⁸ we shall re-

⁷ At its extreme, the Regional Director’s conflict-of-interest analysis would not just require a separate unit of moonlighting police officers; it would preclude them from inclusion in any bargaining unit whose employees could engage in strike activity.

⁸ In view of our decision in *Children’s Hospital of Michigan*, 299 NLRB 430 (1990), we note that the inclusion of the part-time officers in the unit would not jeopardize the guard union status of the Petitioner under Sec. 9(b)(3), as the Petitioner fears. In *Children’s Hospital*, the Board held that because public employees are not employees within the meaning of Sec. 2(3) of the Act, their membership in a guard union does not bar that union’s certification as the representative of a unit of guards under Sec. 9(b)(3) of the Act. In any event, it would appear that the officers’ duties for their full-time public employer are equivalent to those of guards as defined in the Act.

We also find, contrary to our dissenting colleague, that certifying the Petitioner organization does not contravene the Act. *Elite Protective & Security Services*, 300 NLRB 832 (1990) (also involving the Petitioner). See also *Burns*

⁶ The Regional Director did not expressly pass on the status of the part-time officers as guards. No one has questioned their status, however, and we find that they qualify as guards within the meaning of Sec. 9(b)(3) of the Act.

mand this proceeding to the Regional Director for further proceedings consistent with this decision, including ascertaining whether the Petitioner desires to represent the unit found appropriate herein.

ORDER

IT IS ORDERED that the above-entitled matter is remanded to the Regional Director for Region 17 for action consistent with this decision.

Security Services, 278 NLRB 565, 568 (1986) (requirement of “definitive showing” of noncertifiability of union seeking to represent guards).

MEMBER OVIATT, dissenting.

As set forth in my dissent in *Elite Protective & Security Services*, 300 NLRB 832 (1990), I would find that the Security Officer’s Cooperative is not a labor organization that limits membership to guards. Its certification as a representative of the guard unit therefore is barred under Section 9(b)(3). As a result, I would find that the Regional Director erred in not dismissing the petition.